

46 Am. Jur. 2d Judges § 218

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Judges

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X. Vacancy in Office

§ 218. Vacancy in judicial office construed

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A vacancy occurs where there is no one legally entitled to hold office by virtue of having been elected, nor an incumbent who has the legal right to continue in office until a successor is elected or appointed.¹ A vacant office is one that is unoccupied or without an incumbent, and a judicial office is not vacant even though the judge is disabled and unable to perform the duties of office.² The office of a justice is not "vacant," as would trigger the governor's constitutional power to fill the office, where the justice has announced the decision not to seek retention for another term but the justice's term of office has not yet expired.³

In the absence of anything to the contrary, a vacancy in a judicial office within a constitutional provision means a permanent vacancy and not a temporary one.⁴ A vacancy commences when an elected judge leaves office and continues until another elected judge commences term, regardless of whether the vacancy was temporarily filled by a succession of appointees.⁵

Vacancies may be legal, as well as actual.⁶ To allow the process of naming a successor to proceed forthwith and avoid an actual vacancy,⁷ a judicial office may be considered to be vacant even though the person holding the office continues to perform the functions of the office,⁸ such as where a governor accepts a judge's resignation, effective at a later date,⁹ or where an incumbent holds over after the expiration of the term without authority to do so.¹⁰

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Footnotes

- 1 [People ex rel. Duncan v. Beach](#), 294 N.C. 713, 242 S.E.2d 796 (1978).
- 2 [State ex rel. Witcher v. Bilbrey](#), 878 S.W.2d 567 (Tenn. Ct. App. 1994).
- 3 [Turner v. Governor](#), 2017 VT 2, 2017 WL 43330 (Vt. 2017).
- 4 [People v. Sischo](#), 23 Cal. 2d 478, 144 P.2d 785, 150 A.L.R. 1431 (1943).

- 5 Lungren v. Davis, 234 Cal. App. 3d 806, 285 Cal. Rptr. 777 (3d Dist. 1991).
6 People ex rel. Duncan v. Beach, 294 N.C. 713, 242 S.E.2d 796 (1978).
7 In re Advisory Opinion to the Governor, 600 So. 2d 460 (Fla. 1992).
8 Texas Democratic Executive Committee v. Rains, 756 S.W.2d 306 (Tex. 1988).
9 In re Advisory Opinion to the Governor, 600 So. 2d 460 (Fla. 1992).
10 State v. Clark, 87 Conn. 537, 89 A. 172 (1913).

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